

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1248

United States Court of Appeals
For the Second Circuit

B
P/S

UNITED STATES OF AMERICA,

Appellee,

-against-

EDMUND A. ROSNER,

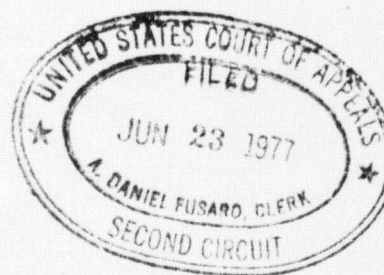
Appellant.

On Appeal From The United States District Court
For The Southern District Of New York

APPELLANT'S APPENDIX

J. JEFFREY WEISENFELD
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STEVEN M. JAEGER,
Of Counsel



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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

Judge Bauman

72 CRIM. 782

Kyatt J.

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TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.:
vs.		AUSA Elliot G. Sagor
IBW	EDMUND A. ROSNER, (all cts.)	
AB	NICHOLAS DeSTEFANO (all cts.)	
AB and	NICHOLAS J. LAMATTINA (all cts.)	
		For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk	3/25/72	A. K. Rosner	5	5
J.S. 3 mailed 1, 2, 3	Marshal	3/25/72	W. S. T. ...		
Violation 1, ✓	Docket fee				
Title 18					
Sec. 1503 & 2 Obstruction of Justice by influencing officer (ct. 2)					
2701 Removal of Govt. Papers (ct. 3)					
201(b) Bribery of employee of U.S.					
Attys Office (cts. 4-6) 371 Conspiracy					
so to do. -- EIGHT COUNTS					

DATE	PROCEEDINGS
7-5-72	Filed Indictment
7-5-72	Bench Warrant ordered on all Defts. - LRIEANT, J.
7-5-72	Bench Warrants vacated. All Defts. (Attys present) plead not guilty. Bail fixed at \$15,000. unsecured FFB to be posted by 4 P.M. on 7/6/72. Bail limits extended to continental limits of U.S. Defendants ordered photographed & fingerprinted. 10 days for motions LRIEANT, J.
7-5-72	Case assigned to Judge Bauman for all purposes - LRIEANT, J.
7-5-72	Bench warrants issued All Defts.
8-17-72	Filed afvdt. of Elliot G. Sagor, AUSA in opposition to motions for discovery and inspection and for bill of particulars. Filed Govt's memorandum of law...
9-1-72	Rosner-Filed affidavit and notice motion various relief, MMXX Filed written summaries of the substance of a defendant's statement

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FILINGS—PROCEEDINGS

AMOUNT
REPORTED IN
EMOLUMENT
RETURNS

Edmund Rosner - Filed Copy of U.S.C.A. Mandate affirming order in
accordance with opinion of court. Judgment ent. 5-11-77 Clerk
Ent. 5-11-77... (mn)

5-11-77 Edmund Rosner - Filed Govts. Affdvt. Re: Dfts. motion for a new trial:

5-11-77 Edmund Rosner - Filed Dfts. Affdvt. in support of motion for a new trial

5-12-77 Edmund Rosner - Filed Memo Endorsed-on notice of motion filed 5-3-77-
"After hearing this matter in open court, the motion is denied. SO ORDER-
ED"---Wyatt, J. (M/N)

5-12-77 Edmund Rosner - Filed memorandum attached to notice of motion filed 5-10-77
"The motion to disqualify myself is denied. I decline to do so. Etc., as
indicated."---Wyatt, J. (M/N)

5-13-77 Edmund Rosner - Filed Notice of Appeal from order denying
new trial dated 5-12-77. M/N

5-24-77 Filed notification and making copies of documents to become
part of the record in case.

5-19-77 FILED TRANSMIT RECORD OF PROCEEDINGS RTD 5/11/77

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A TRUE COPY

RAYMOND M. BURGHARDT, Clerk

Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: UNITED STATES OF AMERICA, :
: :
: vs. : 72 Crim. 782
: :
: EDMUND A. ROSNER, :
: :
: Defendant :
: :
-----X

Before:

HON. INZER B. WYATT,

District Judge

May 11, 1977
2:15 p.m.

A P P E A R A N C E S

ROBERT B. FISKE, JR., ESO.,
United States Attorney for the
Southern District of New York
BY: FREDERICK T. DAVIS, ESO.,
Assistant United States Attorney

ALAN DERSHOWITZ, ESO.,
Attorney for Edmund A. Rosner

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2 (Case called.)

3 (In open court.)

4 THE COURT: I think the record should show before
5 we begin the argument of this motion for a new trial that
6 an affidavit has been filed that I have personal bias and
7 prejudice and that my impartiality -- to get the exact
8 words -- "might reasonably be questioned." I think the
9 code sections are 28 U.S. Code Section 144, and 28 U.S. Code
10 Section 455-A. I have given careful consideration to that
11 affidavit and the accompanying certification and I have
12 concluded that it is legally insufficient, probably untimely
13 and for a number of reasons must be denied. I do deny it.
14 I was out of town a good part of yesterday and the day
15 before and I have not been able to write a little memorandum.
16 I think I will file a memorandum and order that there is no
17 reason to hold up the proceedings this afternoon because
18 of that since the suggestion or motion or request that I
19 disqualify myself and another judge be assigned is denied.

20 Now, there is a motion for a new trial and I
21 will hear counsel for defendant on that.

22 MR. DERSHOVITZ: Thank you, your Honor. I would
23 first like to express my appreciation to the Court for
24 moving the schedule up to allow me to be back. I appreciate
25 that. We are going to submit one additional affidavit of

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2 Mr. Edmund Rosner concerning the conversation that he had
3 with Mr. Daley, the author of the article which is the
4 subject in part of our new trial motion.

5 THE COURT: Wait just a minute and let me read
6 this. Is it Shaw that he refers to, Ed Shaw who used to
7 be an Assistant United States Attorney here?

8 MR. DERSHOWITZ: Yes, your Honor, he was in
9 charge of 3500 material as Judge Bauman found along with
10 Mr. Scoppetta in the original Rosner case.

11 THE COURT: Did he try the original Rosner case?

12 MR. DERSHOWITZ: No, Mr. Robert Morvillo who
13 was chief trial counsel with Elliot Saygor.

14 THE COURT: I have read this affidavit. Mr.
15 Clerk, will you see that this is filed and documented?

16 MR. DERSHOWITZ: Your Honor, I would also like
17 to make a representation to this Court in addition to this
18 affidavit that we have just learned and can incorporate in
19 an affidavit if necessary, but if the Court will accept the
20 representation, that Mr. Daley has extensive tape recordings
21 in his possession or made extensive tape recordings of his
22 interviews with at least Mr. Robert Leuci, and we would
23 intend at any evidentiary hearing or in preparation for
24 evidentiary hearing to subpoena those tape recordings to
25 alleviate any ambiguities factual or other as to what Mr.

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2 Leuci was referring to as to whether or not that information
3 was communicated to Messrs. Scoppetta, Shaw and others.

4 We are not currently informed as to whether or not Mr. Daley
5 has any tape recordings of his conversations with Scoppetta
6 and Shaw, and would not of course make any such representa-
7 tion at this point but would intend at an evidentiary
8 hearing or preliminary thereto to make inquiry via subpoena
9 or informally as to whether or not tapes of such conversa-
10 tions were available and of course the best evidence would
11 be a statement made directly in the voice of Mr. Leuci
12 rather than any characterization or any description of
13 that statement made by any author, even one so reliable and
14 trusted as Mr. Daley considering his previous position with
15 the New York City Police.

16 THE COURT: Unless challenged by the government
17 I certainly am inclined to your word for everything. Does
18 the government have any objection that I assume that what
19 Mr. Dershowitz tells me is a fact?

20 MR. DAVIS. As I understand it Mr. Dershowitz
21 is representing that there are some tape recordings in
22 existence and I am certainly willing to take that representa-
23 tion that they do exist.

24 THE COURT: All right. All right, I will take
25 what you say as truth as I normally would.

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MR. DERSHOWITZ: Thank you, your Honor. Well,

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I'm in this position now, your Honor. I argued quite

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extensively last Friday, which is only several days ago, on

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the merits of the new trial motion in an unsuccessful effort

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to persuade your Honor to grant a stay or bail or other such

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relief. I think the argument is sufficiently fresh in your

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Honor's mind. I have not yet seen the transcript.

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THE COURT: Yes, but I have spent two days in

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Alabama since then and my mind has been completely off the

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subject. I do not think you can assume that my recollection

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is terribly fresh. I think that I did not pass on the

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merits of the motion for a new trial.

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MR. DERSHOWITZ: That's correct, your Honor.

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THE COURT: I think my attitude was that consid-

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ering the background and circumstances of the application

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it would be better if Mr. Rosner began serving his sentence

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and was serving his sentence at the time the application

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was heard even though there was some chance that he might

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be given a new trial. So I do not think I focused on the

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merits at all. Since then, of course, I have heard from you

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in the general character of the motion, studied the papers,

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talked to my legal assistants, but I do not think I really

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faced up to the motion for new trial before.

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MR. DERSHOWITZ: Fine, your Honor, and with that

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in mind I will at least briefly review the motion. I do want to report to the Court that the Court of Appeals did issue the mandate several hours ago today and therefore there is currently no judicial authority in effect for Mr. Rosner to remain at liberty. I am now in the process of negotiating on compassionate grounds with the United States Attorney's Office for the precise day on which Mr. Rosner would surrender considering the fact that he is now in the care and custody of a four, sole care and custody of a four year old child and trying to arrange for the most, the disposition which most effectively serves the interest of that child but that matter is not before your Honor now, and I will move right to the motion for a new trial.

There are several linch pins that underlie the lower court decisions and the District Court decision and the Court of Appeals decision in this case as it has previously been litigated. One critical linch pin is that, Mr. Rosner was convicted on the basis of the tapes and not alone on the basis of Mr. Leuci's credibility or live testimony.

Another linch pin was that Mr. Leuci, though he lied, and though he lied grievously and repeatedly both at Mr. Rosner's trial and in virtually all his dealings with United States Attorneys and with other government officials,

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2 that though those lies came to light subsequently none of
3 them were known to the government at the time of the trial
4 or before the trial. Specifically, there is a finding which
5 is confirmed --

6 THE COURT: Well, now wait. Leuci was a
7 police officer.

8 MR. DERSHOWITZ: Leuci still is a police officer.

9 THE COURT: Was he in a police narcotics squad
10 or something?

11 MR. DERSHOWITZ: Mr. Leuci was a member of the
12 special investigative unit of the New York City Police
13 Department in charge of narcotics. At some point he came
14 to the attention of Mr. Scoppetta and they had long and
15 extensive discussions.

16 THE COURT: Scoppetta was then a State Assistant
17 District Attorney?

18 MR. DERSHOWITZ: Mr. Scoppetta was then in the
19 Knapp Commission.

20 THE COURT: You say he was in. He was not a
21 member of it. He must have been on the staff.

22 MR. DERSHOWITZ: He was on the staff. Was he
23 chief of the staff? I am not sure. An attorney with the
24 Knapp Commission. But --

25 THE COURT: And had been though in the New York

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2 County District Attorney's Office.

3 MR. DERSHOWITZ: I think that is right. Pre-
4 viously he had been.

5 THE COURT: So then he is on the staff of the
6 Knapp Commission. Then he, Scoppetta, went to the United
7 States Attorney's Office and Scoppetta attracted or arranged
8 for Leuci to join his staff. Then Leuci pretended to be
9 a corrupt police officer?

10 MR. DERSHOWITZ: He pretended to be pretending
11 he was a corrupt police officer as it ultimately turned out.
12 He was a corrupt police officer pretending to be an honest
13 police officer pretending to be a corrupt police officer.

14 THE COURT: I do not mean to decide the issue
15 but in your contention he was always a corrupt police
16 officer.

17 MR. DERSHOWITZ: Your Honor, that is the conten-
18 tion which was firmly established by Judge Bauman's opinion,
19 confirmed by Judge Gurfein's opinion, never challenged by
20 the government. It is the law of this case or the fact of
21 this case that Mr. Leuci was as corrupt a cop as has ever
22 existed in the City of New York. He ultimately testified
23 that a day did not go by when he did not take massive
24 amounts of money, money which ultimately reached in the
25 six figures and in the middle six figures. Money that he

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2 received and never paid taxes on. He was involved --

3 THE COURT: Yes, but didn't there come a time
4 when Leuci at least professed to change and, as you would
5 say, I'm sure it must have been argued to the jury, Leuci
6 in order to avoid punishment for his sins of corruption
7 agreed to help the government?

8 MR. DERSHOWITZ: No, that's absolutely not the
9 case, your Honor.

10 THE COURT: Tell me about Leuci then from your
11 standpoint.

12 MR. DERSHOWITZ: I think I will relate facts
13 only which are uncontroverted and that is Mr. Scoppetta
14 interviewed Leuci about corruption in the New York City
15 Police Department. Leuci's response was, "Why do you always
16 ask me about the Police Department? There are corrupt
17 lawyers out there. There are corrupt judges. There are
18 corrupt bail bondsmen, the police are always getting the rap
19 for these kinds of corruption and I don't want to cooperate
20 in any investigation involving police corruption. I want
21 to really get to the essence and I have the ability to do it
22 because I have a cousin who is involved in the mob, named
23 Lustrino, and I am a good contact."

24 Mr. Leuci at this point confessed to Mr. Scoppetta
25 of three or four, there is some dispute as to whether it is

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three or four, what we would characterize and I think there has been no dispute, substantial dispute about this as relatively minor crimes in which he acted as an intermediary between some corrupt people and some other -- well, and other corrupt people, for which he got a small amount of money, but it was clear on the record of this case that he repeatedly denied any corruption involving narcotics. He was specifically asked as to whether he was ever involved in corrupt narcotics activities, and he unequivocally stated, no.

Moreover, the Court found, and Mr. Scoppetta has stated repeatedly under oath that Mr. Leuci never told him about any crimes for which he then could be punished so there was no argument possible to be made that Leuci cooperated in exchange for any agreement not to prosecute him. He had never admitted to a prosecutable offense. The only relevance of the offense was that it gave him credibility in the mob or credibility on the street. Here was a man who it was known had been an intermediary four times unrelated to narcotics. Therefore, he could be trusted by the bad guys out on the street, the corrupt bail bondsman, the allegedly corrupt policemen, corrupt lawyers, corrupt judges, whatever.

So that was the only relevance of the four

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2 offenses and it could not be argued successfully or in any
3 way to the jury that here is a man who had traded his
4 testimony as is usually often the case for immunity from
5 prosecution. There was nothing to immunize him from.

6 Robert Morvillo, in his summation to the jury
7 which I am told was one of the most brilliant summations
8 ever in this courtroom, and I think the judge so stated,
9 said, "Not once did Robert Leuci lie. Not once did he tell
10 a mistruth." That was stated to the jury. And it was stated
11 to the jury, and it was repeatedly throughout this litigation,
12 the assumption was Robert Leuci was a man who had some
13 background, pretended to be corrupt, but virtually no
14 corruption, and no corruption in the area of narcotics.
15 That's the theory on this case --

16 THE COURT: What was Leuci's interest, motive,
17 reward, for testifying and working for the government?

18 MR. DERSHOWITZ: He was a policeman. That was
19 his job. He wasn't a corrupt --

20 THE COURT: You mean from his standpoint or
21 if you believed his story he was simply doing his job as a
22 police officer in exchange for his monthly salary?

23 MR. DERSHOWITZ: Right, but we know his real
24 motive now. His real motive was this. Lurking in the
25 skeleton -- in the closets of his life were an enormous

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number of skeletons. He knew that. It has been alleged that Scoppetta did not know that and that the government did not know that and here was a man who as your Honor perfectly rightfully points out. Why does a guy who is happy in the SIU suddenly put his life on the line becoming an informant? That was a mystery at the time. It was a mystery because there was no obvious motive for him to do it.

Now the motive becomes clear. A man who has earned \$250,000 illegally which he has never paid a penny back on, has never had a tax investigation on so far as we can determine and is still wearing a gun as far as we can determine as an honored member of the New York City Police Department drawing a salary.

This is a man who is the most corrupt policeman in New York City and he knew it, and it is alleged that the government did not know it, and the motive to testify, which any good defense lawyer would be able, in retrospect, to argue to the jury now becomes clear. Not only was he motivated to testify, we submit that he was motivated to entrap. He was motivated to make cases. His value to the government continued only so long as he was succeeding in making cases.

We are arguing that this goes to the merits of Mr. Rosner's guilt or innocence. Let me make it clear. Mr. Rosner has never disputed the fact that he did it. It is

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the "it." He did it. He paid a bribe to Assistant -- a

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non-existent member of the Assistant United States Attorney's

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Office. He did it. He claims and has always claimed as

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a result of incredible pressure of the following kind. A

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righthand-lefthand squeeze. On the one hand he is told by

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Mr. Leuci, "You better find out who the witnesses against

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you are because if you don't you are going to be remanded,

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you are going to be charged with murder."

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There was a missing witness who the government,

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people were telling him, who was dead who wasn't in Mexico,

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who showed up. Ultimately the charges against Mr. Rosner

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were dismissed for lack of failure to prosecute but at the

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time his life, his career, his marriage was on the line.

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Several times he refused. Finally in untaped conversations --

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and this is crucial -- in untaped conversations finally Mr.

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Rosner said, "Okay, I got to find out who these witnesses

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are because I know I didn't do it. Get me the information."

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The tape goes on. The entrapment is completed

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and so the issue of the entrapment is determined

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solely on the basis of the credibility of Mr. Leuci versus

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the credibility of Mr. Rosner and there are sharp disputes

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as to precisely what went on and no corroboration.

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THE COURT: Did Judge Bauman give an entrapment

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charge?

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2 MR. DERSHOWITZ: Yes, he did, he found that the
3 defendant had satisfied its initial burden of going forward
4 and the jury rejected the entrapment defense. Let's do
5 the chronology. So we have the trial, we have the conviction.
6 At this point, just to review briefly the chronology,
7 Mr. Rosner brings a new trial motion at which he alleges
8 and produces two dreadful narcotics addicts off the street
9 who say, half in a stupor in court, "We know that Robert
10 Leuci has been involved in drug activities." This is in
11 January of 1973, that he produces these dreadful witnesses
12 in court.

13 Judge Bauman correctly concludes after hearing
14 these people, finding out that they were virtually shivering
15 from heroin withdrawal on the scene, that he could not credit
16 their testimony, but he states that their testimony, if
17 true, would be relevant to a new trial motion. The very
18 week that that was going on, the speckle of those dreadful
19 addicts in court was going on, Robert Morvillo, the
20 Assistant United States Attorney in charge of the case, was
21 interviewing and meeting with a man named Richard Lawrence,
22 nicknamed The Baron, who was coming to him and saying, "You
23 know Robert Leuci is a corrupt cop. He's involved in
24 narcotics, he's given me narcotics. I've given him narcotics.
25 We have had this transaction. We have exchanged monies.

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2 he's coming to my house," details, etc. They do an investi-
3 gat . They try to check out various of the allegations.

4 The Court of Appeals ultimately found out
5 they did a terrible job in checking out the allegations.
6 The Court of Appeals ultimately condemned Mr. Morvillo and
7 the United States Attorney's Office for their failure to
8 disclose this episode, the Richard Lawrence episode at the
9 very time that these dreadful addicts were appearing in
10 court but ultimately ruled it to be harmless error.

11 So at this point what we have is an allegation.
12 We have the government having some information, not bringing
13 it to the attention of the defendants pending appeal, but
14 still we have a state of the records which assumes that the
15 government prior to trial or at trial had no knowledge of
16 Mr. Leuci's prior drug related corruption.

17 We then bring another new trial motion in which
18 we produce an affidavit by Richard Lawrence, who ultimately
19 comes to our attention. The government, Mr. Joseph Jaffe
20 threatens my associate, Gene Baker, and says, "If you put
21 that witness on the stand he's going to be charged with
22 perjury and you better be careful about suborning perjury.
23 He is lying."

24 What Mr. Lawrence was alleging in that affidavit
25 was that, A, Mr. Leuci had been deeply involved in narcotics

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2 corruption, and B, that Mr. Lawrence so told the United
3 States Attorney's Office in January of 1973. Mr. Lawrence
4 is frightened, scared, he indicated an unwillingness to
5 testify. The thing was sub judice. It had been set for
6 a hearing. It wasn't clear what was happening. The case
7 was pending before the United States Supreme Court on another
8 motion, on the initial petition for certiorari based on
9 allegations of Sixth Amendment violations and at this very
10 time suddenly we read in the newspapers, in The New York
11 Times, the May 1, 1974 that the whole bottom has fallen out
12 of the Leuci barrel. That there is a proceeding before
13 Judge Bauman wherein Nadjari is on one side the special
14 prosecutor, Mr. Curran is on the other side. Everybody is
15 fighting for the information about Mr. Leuci, but we are
16 getting information, something is going on. Mr. Leuci, no
17 disclosure to the defendants.

18 Finally several days later after I appear in
19 Judge Bauman's court we get disclosure that in fact Mr.
20 Leuci has just confessed to several narcotics-related crimes,
21 not that everything that Mr. Lawrence, not that everything
22 The Baron said was correct, but some of it is correct.

23 Therefore we have no objection to a reopening,
24 and there should be an evidentiary hearing.

25 THE COURT: Were the matters about which Mr.

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2 Rosner was trying to get information from the United States
3 Attorney related to narcotics?

4 MR. DERSHOWITZ: Definitely, we made a specific
5 request. Not we. I was not in the case at the time. A
6 specific request. Because Mr. Rosner had heard street rumors
7 from the likes of those dreaded narcotics addicts. "Yeah,
8 Leuci is a terrible guy. He's involved in corruption."
9 Requests were made. It was not forthcoming. The government
10 specifically denied any narcotics involvement.

11 Let me go back to one little episode just to
12 bring that in context. Mr. Leuci had made an extensive
13 series of tape recordings for Mr. Scoppetta. Scoppetta had
14 returned them to Mr. Leuci with the understanding and
15 knowledge that Leuci would destroy them. We submit to this
16 day that was 3500 material, that was improperly destroyed
17 Brady material. In any event the tapes were destroyed.

18 The government I think out of an understandable
19 sense of concern for what had happened allowed defense
20 counsel for Mr. Rosner to interrogate Leuci prior to trial.
21 He was interrogated prior to trial, and specifically asked
22 about narcotics involvement, and again denied, including
23 the giving of drugs to informants which he specifically
24 denied and was asked again at trial.

25 So there is no question. I don't think anybody

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2 has disputed, I don't think the government will dispute,
3 this is a Paradime case where the requests were as specific
4 pretrial as they be under the three part agra standard.
5 There could not be a case where the requests were more
6 specific. The requests were any information relating to
7 drug dealings and drug corruption by Mr. Robert Leuci so
8 that we can argue that he had a motive to testify falsely
9 because he was protecting himself. That was specifically
10 asked for of the government and that he had a motive to
11 entrap, that is going to the guilt or innocence, not only
12 to the crelibility of the witness, that produced nothing.

13 So now we are at the point where we learn that
14 Leuci has committed certain crimes. I interview him. He
15 relates some crimes, denies others. Two weeks later or
16 three weeks later we have a hearing. He then admits the
17 crimes he denied to me previously. Admits that he lied to
18 me. Admits that he lied to the United States Attorney's
19 Office in those interviews, and admits that he lied
20 repeatedly to everybody else.

21 THE COURT: Where is this in the time sequence?
22 This is after the conviction?

23 MR. DERSHOWITZ: This is exactly at the time your
24 Honor comes into the case. That is in the same month that
25 your Honor came into the case in the summer of 1974, your

Honor had part of the case on sentencing, Judge Bauman, who was just about to leave the court, had this as his last case.

THE COURT: This is after the conviction and after the affirmance and after the sentencing had been sent back for me to do it in place of Judge Bauman or somebody to do it and I got it by lot?

MR. DERSHOWITZ: Exactly and there is no dispute, the government will not dispute, that we filed motions not only timely the day we found out about this information but we filed them two days before we found out about the information because we suspected we were going to find out about the information. I took a trip down from Boston. Appeared in Judge Bauman's courtroom. Stood up and intervened in the Nadjari-Curran matter.

Your Honor, unless there be laches problem I want the Court to know that I am here representing Mr. Rosner. As soon as we get any information I want to file a motion. There hadn't been a movement of delay. The anticipatory relief was sought. That was litigated very extensively over the summer of 1974 and ultimately a very long opinion was written by Judge Bauman, was not published, and which concluded basically there were no disagreements of fact. That, yes, he had committed all those crimes.

We extensively, we acknowledge, we extensively

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2 examined Scoppetta and we tried to elicit from him obviously
3 indications or admissions that he may have known of the
4 narcotics involvement prior to trial. It is an argument
5 which I simply don't comprehend that the government is
6 now making, that the fact that we were able to examine
7 Scoppetta and that Scoppetta denied it should deny us an
8 opportunity to confront Scoppetta with information that we
9 did not have at the time, namely, that Leuci has not
10 admitted that he told Scoppetta this information.

11 Mr. Scoppetta is hard enough to challenge as is.
12 He is one of the brightest, most dedicated public servants.
13 Deputy Mayor of the City of New York. Imagine what a
14 challenge he poses to any defense lawyer and I did not feel
15 that I could ask him any questions upon which I had no basis
16 and at that point I didn't have a sufficient basis to
17 inquire. We did not have a conflict in testimony even
18 between Mr. Leuci and Mr. Scoppetta. We had a conflict in
19 testimony we hoped to elicit but it never materialized.

20 THE COURT: You have no information on which,
21 as they used to say, you could force the answer.

22 MR. DERSHOWITZ: That is right. So the hearing
23 was had and the judge concluded several things at that
24 hearing. 1, That the crimes were not disclosed that Mr.
25 Leuci had massively perjured himself, those were the judge's

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words, and had committed numerous crimes of which a listing of a few would suffice and I think he characterized it as massive corruption -- I don't have the opinion right before me but there is no doubt that he was very, very corrupt. But the judge ruled that the case was made essentially on the tapes, and that therefore even if this information would have challenged Mr. Leuci's credibility, there was sufficient independent corroboration in the tape recordings to warrant the jury's conclusion that Mr. Rosner was guilty and was not entrapped.

It was at that point in time when I determined that it would be appropriate and necessary on the part of my defendant that inquiry be made of the jurors as to whether or not in fact the case was made on the tapes. I had listened to the tapes. I had found them impossible to follow. I had found them garbled and difficult and vague, and whole sentences and whole paragraphs seemed not to be on the tapes and seemed to be incomprehensible and I decided at that point that it was necessary to inquire as to the best evidence, that is, rather than have the judge speculate as to whether the jurors were convinced by Leuci's testimony or by the tapes, ask them that. Rather than speculate as to whether the jury's verdict might have been, would have been, should have been, could have been affected by this

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2 new information about Mr. Leuci's massive criminal past,
3 ask them.

4 I was aware, though I had not read the Brasco
5 case which was not yet decided at the time, I was aware that
6 there are some delicacies involved in interviewing jurors.

7 THE COURT: Yes, and you told me you went to the
8 P - Association and, regardless of what the state of the
9 law is, I do not assume that you did anything improper.
10 You tried to get advice from professional organizations and
11 you thought that it was perfectly proper for you to go out
12 and talk to the jurors and you did.

13 MR. DERSHOWITZ: Can we just drop that matter
14 then, your Honor, and I'll proceed?

15 THE COURT: Yes, because as far as any suggestion
16 of impropriety is concerned.

17 MR. DERSHOWITZ: Fine.

18 THE COURT: I do not myself like the practice,
19 but that may or may not be right. I am by no means expert
20 on it but at any rate I think you told me last time.

21 MR. DERSHOWITZ: I did.

22 THE COURT: You tried to get guidance from
23 professional bodies and you thought you were doing the right
24 thing.

25 MR. DERSHOWITZ: Yes, your Honor.

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2 THE COURT: All right, so you did. You got
3 two affidavits.

4 MR. DERSHOWITZ: We got two affidavits of jurors;
5 one of them says that the tapes were difficult to listen
6 to, and the case was made on Leuci's testimony, and both
7 affidavits state that if we had known that Leuci was as
8 corrupt as it now turns out he is on the basis of Judge
9 Bauman's findings which we showed the jurors, we would have
10 returned a different verdict.

11 THE COURT: Except I think -- this is my
12 tentative conclusion -- I think I have got to reject that
13 under Rule 606B and I am sure you would like to be given
14 a chance to comment on that.

15 MR. DERSHOWITZ: Your Honor, our rule is that
16 606B, as the history indicates, does not report the change
17 in existing law and that existing law is, although jurors'
18 affidavits or jurors' evidence is not to be taken to impeach
19 the jury's verdict our view essentially comes down to this
20 in a very common sense way.

21 The purposes of this motion we concede the
22 jury reached the right verdict at the time it rendered its
23 judgment based on the information it had available to it,
24 information having an honest policeman testifying against
25 a lawyer. It was open to them to make any conclusion it

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2 wished and it properly, for purposes of this motion we will
3 concede, arrived at that judgment. It did nothing wrong.

4 We are not seeking to impeach it. We are not
5 seeking to challenge it. What we are seeking to do is
6 answer the question that Judge Bauman raised. Answer the
7 question that Aggers raises. Answer the question that Judge
8 Gurfein's opinion in this case raised. Namely, what would
9 the jurors have done had they known the truth about Robert
10 Leuci? If the Court had not asked that question I would
11 not be trying to answer it. But the Court purported to
12 base its opinion on a surmise based on its experience as
13 trial judge sitting in the courtroom saying, "Look, I was
14 there, I heard the testimony. The testimony was complete
15 and the jury would not have reached a different verdict had
16 it had that evidence available to it because the case was
17 made on the basis of the tapes."

18 We are not seeking to impeach anything the jury
19 did. We are seeking to give the jury an opportunity to
20 answer a question that in effect the Court has put and the
21 Court has taken upon itself, with all due respect, to answer,
22 and the Court is not the best source of information as to
23 what the jury would have done. It seems to me --

24 THE COURT: No, but the jurors are forbidden
25 source, are they not?

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2 MR. DERSHOWITZ: It seems to me that there is a
3 very serious question I think and a question which has never
4 been faced by any Court. Under the Aggs standard, under
5 the new standards that have been set up talking about guilt
6 or innocence and what the jury really would have done, the
7 movement as I call it in my classes at least from prophylactic
8 approach to law to the guilt or innocence approach to law
9 exemplified by the writings of people like Judge Frankel,
10 and Judge Friendly, saying we are more concerned with
11 substance than with exclusionary rules. We want to know
12 whether or not this really would have made a difference in
13 the jury verdict.

14 Under that approach it seems to me it should be
15 open to us to argue and at least one court has adopted
16 that argument. To be sure, it is a state court in New York,
17 which we cite in our affidavit, People v. Johnson, that
18 when the opinion of a Court is based on the assumption as to
19 what the jurors would have done, it is perfectly appropriate
20 to discover from the jurors what indeed they would have
21 done. I think this is a serious --

22 THE COURT: I must say I am unsympathetic with
23 that. I think to induce a system by which jurors can tell
24 what their mental reaction would have been I just don't think
25 you can possibly do.

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2 MR. DERSHOWITZ: Your Honor, we will rest on the
3 fairly full elaboration of that argument that appears on
4 pages 8 through 11 or 12 in the affidavit, and I understand
5 your Honor's position. I think it is a very difficult issue.
6 I think it poses problems --

7 THE COURT: 606 says that a juror may not
8 testify to the effect of any thinking upon his or any other
9 juror's mind or emotions as influencing him. To assent to
10 or to dissent from the verdict or indictment or concerning
11 his mental process is in connection therewith. It just
12 strikes me that this falls just about as clearly under that
13 interdiction as anything could.

14 MR. DERSHOWITZ: Your Honor, let me try to
15 respond to that. We would not purport to ask the juror to
16 describe in any way any statements that occurred during the
17 course of the jury's deliberations or any matter affecting
18 his mental or emotional process. We would simply ask him
19 two questions. That is, could you understand the tapes?
20 That's a simple question of fact. Could you understand
21 what went on in the tapes? One juror has told us, no, he
22 didn't understand the tapes, they were garbled, very
23 incomprehensible. That's No. 1.

24 No. 2, you were told that Robert Leuci was a
25 certain kind of policeman. We are not going to ask you what

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2 effect that had on your judgment. We are going to ask you
3 this: Had you known the truth about Mr. Leuci, had you
4 known that he was in fact a -- and then describe what he was
5 in fact -- would this have changed your verdict? It seems
6 to me that does not fall within the rule. Neither of the
7 two clauses of the rule address itself to either of those
8 two questions.

9 We are not asking the jury why it reached its
10 decision, what mental process it employed. We are asking
11 them to answer the question that the Court basically has put
12 to the jurors but has answered by itself. Essentially our
13 argument is this. There have been major developments in the
14 law recently in terms of what the appropriate response is
15 to a failure by the government in its Brady violations.

16 This, I think everybody will concede, is a very
17 close and very difficult case. That is why it has been so
18 vigorously litigated. Never I think in the history of this
19 courtroom has somebody testified and then been disclosed to
20 be as corrupt as Mr. Leuci has now turned out to be. I don't
21 think we are going to get an argument from the government
22 about that. This is a unique singular case on that regard.

23 Therefore, the only way to save the conviction
24 was to conclude that it wouldn't have made any difference.
25 Reasonable people could disagree about that.

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THE COURT: That is what Judge Bauman concluded.

MR. DERSHOWITZ: That is what he concluded. And he concluded on the basis of his own observations and we think speculations.

THE COURT: Well, he was the trial judge.

MR. DERSHOWITZ: I know.

THE COURT: He was in certainly a unique position to know.

MR. DERSHOWITZ: Well, there are only twelve people who are in a more unique position to know that and that is the people who actually made the decision on Mr. Rosner's guilt or innocence and we submit that in this case, in the Supreme Court of the United States has indicated even under the most stringent rule in the interests of justice may require an exception to be made, and we think this is the case for the exception for this reason. Here we have jurors who are saying, "We would have concluded that this man was innocent if the government had not failed in its obligation," which really brings us to the next point which is --

THE COURT: No, I don't think they say, "We would have concluded this man is innocent." They said, "We would have concluded giving your argument its most extreme effect. We would have concluded that the government had not

1 satisfied beyond a reasonable doubt that he was guilty."

3 MR. DERSHOWITZ: To the extent that juries think
4 that way in reasonable doubt, that's a more accurate
5 description. I can only --

6 THE COURT: Yes, I'm afraid so.

7 MR. DERSHOWITZ: I think what they said basically
8 was, we would not have convicted, and probably your
9 description of it is the more accurate. In any event, at
10 the time that all this was being litigated and just moving
11 from this matter to the other, which is related, at the
12 time this was being litigated it was assumed by every judge
13 who passed on this case from beginning to end that the
14 government had no prior knowledge about Mr. Leuci's drug-
15 related activities.

16 To be sure there was a tape recording which we
17 discovered on the last day of the hearing as the result of
18 an inadvertence, we think, in which we finally discovered
19 this tape recording of the Leuci-Lawnrece tape which we
20 got the government to admit that it had in its locked files.

21 A question about whether anybody heard it.
22 Whether anybody understood it. The judge concluded after
23 listening to the tape it was ambiguous. It may have
24 suggested to some that Mr. Rosner -- that Mr. Leuci was
25 involved in some aspect of narcotics dealings but it could

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2 just as well have been interpreted to mean that he was
3 working undercover in the narcotics area and was just
4 doing everything pretending, pretending to know a lot about
5 street crime and, therefore, the judge refused to conclude
6 that this attributed knowledge to the government of prior
7 crimes.

8 I think it is fair to say that every judge who
9 has passed on this issue has had implicit in his decisions
10 that if it could be shown that the government knew, directly
11 knew that Mr. Leuci had been involved in substantial
12 narcotics activities and was lying about that when he
13 denied at both pretrial and at the trial, I think it is
14 implicit in every judicial decision in this case that a new
15 trial would have to be given at that point. We think we can
16 now demonstrate that, and it seems to me that on the basis
17 of this evidence which we did not come up, we didn't know
18 New York Magazine was going to have this article. We didn't
19 know there were tapes. We didn't know. We hadn't planned
20 that a book would be written.

21 But now that that has happened and has come to
22 our attention we have acted as quickly and as diligently
23 as we can and we think that we are entitled to an evidentiary
24 hearing at which we can establish or seek to establish. It
25 would be a very short evidentiary hearing, seek to establish

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1 that the government did in fact know that Mr. Leuci had
2 been involved in these activities and should have disclosed
3 that to the government so that entirely different kind of
4 argument could have been made to the jury, and that
5 essentially is our position. What we are seeking at this
6 point is not a ruling. We are seeking simply scheduling
7 of an evidentiary hearing at your Honor's total convenience.
8 It can be very quick. We don't think we will have to call
9 very many witnesses.
10

11 And we think that when full evidence is heard,
12 your Honor will be in a position to decide whether or not
13 the state of the record is consistent with the law of the
14 case essentially. That is what we are asking, whether the
15 state of the record is consistent with the law of the case,
16 the law of the case being that the law applicable depended
17 on a conclusion that the government did not know of Mr.
18 Leuci's narcotics activities prior to trial.

19 THE COURT: Isn't the new evidence on which you
20 now rely, assuming that it justifies your expectations,
21 isn't it essentially just the same thing cumulative to what
22 was offered to Judge Bauman?

23 MR. DERSHOWITZ: Absolutely not, your Honor. We
24 had no evidence to offer Judge Bauman correctly establishing
25 that the government knew prior to trial. We had one minor

document, a thing called the Goan memorandum which Judge Bauman referred to as the \$50 triviality, it involved a \$50 matter which everybody has poo-pooed right from the beginning. We didn't poo-poo it but the Court is, \$50.

What we are talking about now is just the kind of evidence that we have never been able to present before any judge, surely not before Judge Bauman, surely not before the jury. This is a totally different matter. Yes, it is based on the same conclusion that we had hoped the Court might reach, but had no basis on which to question Mr. Scoppetta, and the Scoppetta questioning, which is incorporated in Mr. Davis' affidavit, we would like to incorporate as our own exhibit. It is the best evidence, if your Honor reads it, that we just couldn't prove as you said, we couldn't elicit that information. We may not be able to now. It seems to me we are entitled to examine that witness. We are entitled to confront Leuci with Scoppetta and Scoppetta with Leuci.

What's happening, as we had suspected right from the beginning, Leuci is gradually making disclosure. He's disgorging it in parts. Every evidence in this case is consistent with that a little at a time, a little at a time. That, your Honor, in a nutshell is what I have been put professionally in the extremely embarrassing position of

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1 coming before court, after court and seemingly being in the
2 position of stretching out this litigation. It is the
3 nature of Mr. Leuci's disclosure, it comes in dribs and
4 drabs. The latest one proves something which is a quantum
5 leap different than at least the record in this case had
6 previously established, that is, if true it establishes
7 direct government knowledge that Leuci perjured himself.
8 That brings the case within the Knapp standard.
9

10 The first criteria elaborated by the Court in
11 the Aggers case, saying of course if the government sits by
12 and knowingly allows perjured testimony to occur, then a new
13 trial is required, and then it states a very minimal
14 standard, one which the government will concede was not
15 applied in this case.

16 So it is completely different than the informa-
17 tion. It is not at all cumulative. If I were to come into
18 this court, your Honor, and say, now we have discovered
19 Leuci not only committed 46 crimes, and made \$250,000, it
20 was really \$300,000, it was really 48 crimes, I assure you
21 I would not be here making that argument.

22 THE COURT: If I understand you correctly, you
23 are saying that the government knew about it.

24 MR. DERSHOWITZ: That's right.

25 THE COURT: So that what you are doing is invoking

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the principle that a verdict has to be set aside in order to deter the government from such conduct in the future?

MR. DERSHOWITZ: Your Honor, there are various rationals for that. 1, that of course there is a deterrent rationale. There is also the rationale invoked by the United States Supreme Court which says, the waters of justice are polluted when the government has knowingly allowed a perjured witness to go on and contribute in any material way to the prosecution.

But finally, your Honor, this is a case involving guilt or innocence, and if the government had any information which could have changed the nature of the presentation to the jury -- as your Honor put it right in the beginning -- what was he motivated for? An argument that was legally unavailable and it would have been available, the verdict in this case might very well have been different. This is not a case where we are seeking only prophylactic --

THE COURT: Did Scoppetta testify at Mr. Rosner's trial?

MR. DERSHOWITZ: He did, but only briefly as to the nature of Mr. Leuci's --

THE COURT: But you are suggesting that the defense would call Scoppetta and show by this newly discovered evidence that he had knowledge of offenses by Leuci

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2 which had not been brought out?

3 MR. DERSHOWITZ: That is right.

4 THE COURT: All right. Then would you argue
5 that to the judge or the jury?

6 MR. DERSHOWITZ: We would argue to the judge.
7 We would argue to your Honor that that establishes that
8 the government knew that. We would ask for a new trial at
9 which we could then argue to the jury, look --

10 THE COURT: Suppose you get a new trial and
11 that's brought out.

12 MR. DERSHOWITZ: Yes.

13 THE COURT: Then do you argue that to the judge
14 or to the jury? And what is the argument? All right, the
15 government has been guilty of misconduct. What do I do,
16 dismiss the indictment?

17 MR. DERSHOWITZ: No, it seems to me all we are
18 entitled to. We would be very satisfied with the following.
19 I am absolutely convinced and every good trial lawyer that
20 I have spoken to is convinced that if this case were to be
21 tried today on the basis of Leuci as he currently exists,
22 there would not be a chance in the world of conviction and
23 that's what we would simply tell the jury the truth, which
24 the government now concedes, the jury was not told the truth.

25 The only dispute is whether or not it was the

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1 government's fault that the jury wasn't told the truth or
2 it was Mr. Leuci's fault. The argument that Mr. Leuci was
3 part of the government. We made that argument. It was
4 rejected. But the only dispute as to whose fault it was,
5 the government concedes that it was not -- indeed, your
6 Honor talking about judicial notice, if the Court, if the
7 government which I know is seriously considering it, if the
8 government had conceded as soon as it learned about Leuci's
9 massive perjury, if the government had conceded, all right,
10 look, the perjury was just too great here, let's try this
11 thing over again, it could have been tried in the fall of
12 1974 in front of a new jury, the evidence would have come
13 out about Leuci's criminality and we would now know whether
14 or not we are right or the government -- we may be right.
15 The government may be right.

16
17 If it turns out that we are right and Mr.
18 Rosner's conviction is sustained, a grievous injustice has
19 been done. If it turns out the government was right,
20 nothing has been lost. There will be a trial in front of a
21 jury which will hear the real Robert Leuci testify. It
22 will decide. If it decides he is guilty, the matter will
23 finally be closed. Thank you, your Honor.

24 THE COURT: All right. Will the government
25 address itself to the question?

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2 MR. DAVIS: I would like to -- your Honor, the
3 principal point that I would like to make to your Honor is
4 that 99.99 percent of everything that Mr. Dershowitz has
5 related to your Honor about the history of this case was
6 thoroughly explored in numerous post-trial proceedings, and
7 in particular in a hearing on the new trial motion held
8 before Judge Bauman in July of 1974. Judge Bauman wrote a
9 very careful, lengthy and scholarly opinion denying the new
10 trial motion. That decision was appealed and was affirmed
11 on appeal.

12 THE COURT: Was his decision reported?

13 MR. DAVIS: His decision I believe was not
14 reported. It was annexed to the new trial motions filed
15 by Mr. Rosner, but I do not believe it appears in the
16 supplement at all. The opinion on appeal of course was
17 reported and the Supreme Court denied certiorari on that new
18 trial motion. Therefore, the issue of whether or not Mr.
19 Leuci perjured himself and the issue of what impact that
20 perjury would have or might have had on the jury has long
21 been decided. I mean, it was decided almost three years ago
22 in an opinion that has been subject to complete appellate
23 scrutiny.

24 The only point that is before your Honor today
25 is whether any new evidence found in the three years since

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1 the new trial motion was denied merits any further judicial
2 scrutiny at all and it is our position that the new material
3 -- I don't even want to call it evidence -- that has been
4 submitted by Mr. Rosner, does not even begin to reach that
5 standard.
6

7 With respect to the jurors' affidavits, I will
8 really rely on our affidavit in response. Mr. Dershowitz
9 seems to argue that the issue of their admissibility may
10 vary depending on the use to which the juror affidavits
11 are to be put. Rule 606B of course simply says that they
12 are flat incompetent and that I believe the rule says they
13 may not be received for any purpose.

14 I would like to make one further point in that
15 regard, your Honor, and I don't want the government to be
16 thought of as hiding behind any technical rule. As addi-
17 tional grounds for why the juror affidavits do not themselves
18 merit any new trial, I would urge that they are intrinsically
19 and essentially ambivalent and ambiguous in that we submit
20 it is virtually impossible for a juror almost three years
21 or more than three years, three and a half years after the
22 event to make any meaningful calculation whatsoever as to
23 what he might have done or might not have done under certain
24 circumstances and we submit that the juror affidavits, even
25 if your Honor were to receive them in violation of the rule,

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1 simply do not provide any new grounds for a new trial.

2 The other grounds to which Mr. Dershowitz
3 addresses himself is of course the magazine article about
4 Mr. Leuci. The point that I have tried to make in our
5 affidavits is that the issue of when Mr. Scoppetta first knew
6 about the full extent of Leuci's criminal activity has been
7 the precise and immediate subject of several searching
8 judicial inquiries. As the transcript indicates, both he and
9 Mr. Leuci were questioned extensively about just that
10 problem in July of 1974, and indeed, as we point out, only
11 in the last few weeks or months in the Wolf trial,
12 precisely the same issue was raised again. There was
13 extensive cross examination and the facts remain exactly
14 as Judge Bauman found in August of 1974.

15 The only new evidence that Mr. Rosner now comes
16 up with is this magazine article. We suggest, your Honor,
17 that the possibility that either Mr. Scoppetta or Mr. Leuci
18 would say anything different in a published article than
19 what they had already said under oath is itself absolutely
20 absurd. In addition to that, as we have pointed out, the
21 article itself is essentially ambiguous as to who was
22 talking about what, and it clearly does not put the lie to
23 anything Mr. Scoppetta or Mr. Leuci said in the 1974 hearings.

24 Therefore, for all of these reasons we suggest
25

1 that there need be no hearing whatsoever and that the new
2 trial motion should be denied forthwith.

3 MR. DERSHOWITZ: Your Honor, one response. My
4 understanding is that all of the events to which Mr. Davis
5 refer occurred prior to the publication of the article, as
6 well as the Wolf trial. There is no conceivable estoppel
7 of the res judicata effect.

8 The only other thing he refers to is the
9 previous searching inquiries and I think my answers to that
10 are full and complete. We simply did not have this available
11 evidence and the available statement. If it is true that
12 Mr. Leuci did not say these things or if there is any
13 ambiguity, we will know that as soon as we subpoena the
14 tapes. It is our expectation that we will hear on the tapes
15 Mr. Leuci saying in substance just these kinds of things.

16 If you are right and we can get the tapes, there
17 will be no need for an evidentiary hearing. Indeed,
18 talking just about procedures to cure, I would be happy with
19 the following procedure if acceptable to the government and
20 to your Honor. That is if we can get a Court order directing
21 the disclosure of the tapes to the government, to me, I
22 would be happy to listen to the tapes, to report back to the
23 Court what the tapes state and if there is any direct
24 evidence on the tape that supports our view, to so indicate.
25

2 If there is not any direct evidence on the tapes to so
3 indicate, and we do of course have Mr. Daley who says there
4 is no ambiguity about it, that is exactly what Mr. Leuci
5 said.

6 THE COURT: I must say that after listening to
7 these very able arguments I am inclined to say that I do
8 not think Mr. Rosner has made out a case which would justify
9 relief under either of the sections cited, either Rule
10 33 or Section 2255. I am assuming in this connection that
11 Rule 33 motion is timely made, although I have some doubt
12 about that. Since that rule was that the motion be made
13 two years after final judgment, I have some question about
14 that. I prefer not to decide the motion on that ground and
15 I do not. The 2255 motion of course can be made at any time.

16 I think the affidavits of the two jurors fall
17 squarely within Rule 606B, that jurors are not able to
18 testify to the effect of anything upon their minds as
19 influencing his or her to consent to the verdict.

20 I would give effect to the able argument of Mr.
21 Dershowitz in response to my interrogation about that but I
22 am not persuaded. I think essentially it shows either that
23 Leuci is a little worse than he admitted at trial, which
24 I think makes it very like the matter that was before Judge
25 Bauman affirmed by the Court of Appeals, or that the

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2 government was guilty of some shenanigans by not either
3 bringing out on direct examination or making the information
4 available to defense counsel at the trial so that they would
5 have a further opportunity to cross examine Leuci.

6 The added element here is that through Scopetta
7 the government knew more than it conceded at the time, and
8 therefore was guilty of misconduct and therefore the judg-
9 ment of conviction should be set aside. I just don't
10 think I can persuade myself to accept that argument. I feel
11 obliged to deny the motion.

12 I do not think it would serve the interests of
13 justice to delay the determination of this matter on which
14 my mind is fixed in order to permit me to write a long
15 opinion. I have tried in my questions to counsel in the
16 dialogue that we had to understand the situation thoroughly.
17 Counsel have been very helpful.

18 Therefore, I endorse the motion. I have endorsed
19 the motion after hearing this matter in open court. The
20 motion is denied, so ordered.

21 I indicated what my disposition had been on the
22 motion to disqualify but I think I ought to make a short
23 statement of my reasons in respect of that matter, and I
24 have not. I was out of town most of yesterday and the day
25 before. I have not had an opportunity to do that. You

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2 have been told that I am not going to disqualify myself,
3 and I have not, and I have passed on this motion, but I am
4 going to file a short memorandum that will at least contain
5 the essence of the reasons for that.

6 Is there anything else that we can do this
7 afternoon or is that it?

8 MR. DERSHOWITZ: No, thank you, your Honor,
9 again for your accommodation on my time schedule and I have
10 to go back to the other courtroom now.

11 THE COURT: Mr. Clerk, the court will be in
12 recess.

13 (Time noted: 3:25 p.m.)

14 * * * * *

11
STATE OF NEW YORK) ss.:
COUNTY OF BRONX)

SYLVIA COHEN, being duly sworn, deposes and says:

I was a juror at the trial of United States v.
Edmund Rosner and I voted for his conviction.

I have learned that Robert Leuci lied during
his testimony at that trial when he denied having committed any
crimes other than the few instances in which he was involved in
the sale of police information. I have been shown Judge Bauman's
findings indicating that the jurors would not have changed their
minds about voting for conviction even if they had known about
Robert Leuci's extensive criminal past. If I had known about all
the crimes Leuci had committed and if I had known he had lied about
them during his testimony I would not have voted for conviction.

During the deliberations I was concerned about
whether or not Leuci had entrapped Rosner into committing the crimes
for which he was indicted. Leuci's and Rosner's testimony varied
concerning the events regarding this matter and in the end I believed
Leuci's version. The tapes were not that important since you could
hardly hear Rosner on them.

A45

A46

Had I known the truth about Leuci's criminal past
I would not have been able to believe his testimony and consequently
could not have voted for conviction.

Sylvia Cohen
SYLVIA COHEN

Sworn to before me this 21st
day of July, 1976.

Naomi M. Werne

NAOMI M. WERNE
NOTARY PUBLIC, State of New York
No. 41250211
Qualified in Queens County
Certs. filed in New York County
Jury List May 20, 1977

A47

STATE OF NEW YORK)ss.:
COUNTY OF WESTCHESTER)

SEYMOUR MEISNER, being duly sworn, deposes and says:

I reside at 38 Byway, Hartsdale, New York. I
was a juror at the trial of United States v. Rosner in December
1972 and I voted for conviction of the defendant.

One of Mr. Rosner's attorneys showed me
Judge Bauman's opinion in which the Judge summarized the crimes
which Robert Leuci had actually committed but which he had denied
at Rosner's trial. I also learned that the Judge concluded in that
opinion that the jury would not have changed its mind about voting
for Mr. Rosner's conviction even if the jury had known about
Detective Leuci's actual and complete criminal past.

I know that if I had known that Leuci had
lied during the trial and that he really had committed many crimes
over and above the few bad things he mentioned at the trial, I would
not have voted for Mr. Rosner's conviction.

The main issue we had to decide as jurors was
whether or not Leuci entrapped Rosner into purchasing the papers.
Leuci's testimony contradicted Rosner's and ultimately I believed
Leuci.

A48

But if I had known the truth about Leuci's criminal past and that he had committed numerous crimes and had lied, I would not have believed in Leuci's testimony and I would not have voted for conviction.

Seymour Meisner
SEYMOUR MEISNER

Sworn to before me this 15th
day of July, 1976.

Naomi M. Werne

NAOMI M. WERNE
NOTARY PUBLIC, State of New York
No. 41,450,644
Qualified in Queens County
Term Expires March 30, 1977

A49

NEW YORK

The Cop Who Knew Too Much

By Robert Daley

"...Detective Robert Leuci, undercover agent, star witness, led prosecutors to cases involving 100 people. Now he was on trial..."

After testifying for two days, Detective Robert Leuci stepped down from the witness stand in a Manhattan courtroom last month, and a six-year segment of his life was over. During that harrowing time, he had served various city and federal prosecutors—first as an undercover agent compiling evidence of corruption within the criminal-justice system, and afterward as principal witness in case after case in court. Leuci, now 36, had proven to be a one-man task force, responsible either directly or indirectly for cases made against five corrupt lawyers, a corrupt bail-bond investigator, and a corrupt assistant district attorney; against seven organized-crime figures; against a corrupt police captain, three corrupt sergeants, and over 50 corrupt patrolmen and detectives. The Special Investigating Unit—Leuci's unit—of the Narcotics Division had been wiped out. Out of about 70 detectives assigned to SIU between 1968 and 1971, 52 had been indicted among them Leslie Wolff, Leuci's former partner, defendant in this final trial. Leuci himself was adding up a different score. He had been forced to

turn against friends and former partners. Two of them, when confronted, killed themselves with their service revolvers; two others, after arrest, suspension, indictment, after months of heavy pressure from prosecutors, had dropped dead from heart attacks. Both were 42 years old. A sergeant went insane. On the Mafia side, five of Leuci's contacts, including his cousin John Lusterino, were murdered by hit men. Born and raised in Queens, Leuci was the first member of his family ever to finish high school. His father was a foreman in a pipe factory; his mother worked in a sewing-machine plant. Both had contempt for the Mafia element among their relatives, and they instilled this contempt in the oldest son. October 18, 1961, the day Bobby, aged 21, was appointed to the Police Department, was the proudest in all their lives. Leuci, five foot nine, stocky of build, with dark-brown eyes and thick, lustrous black hair, had a cherubic countenance then and was known to other cops as Babyface. He was eager, enthusiastic, and worked so hard that within three years he had been pro-

moted into the Detective Division and assigned to Narcotics. That was where he first saw corruption. Before long, he was taking money himself.

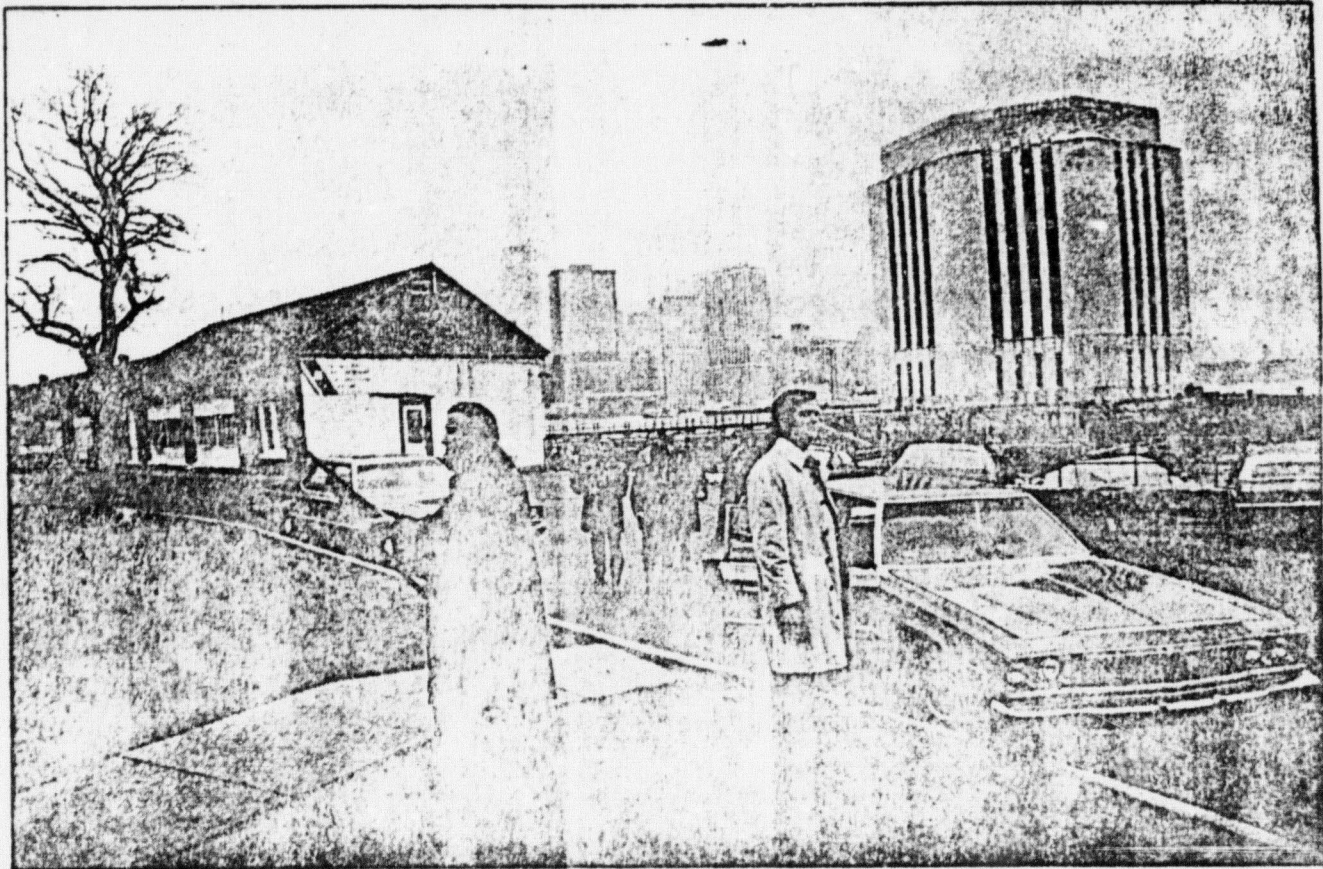
February, 1971. Detective Second Grade Leuci, 30, sits in earnest conversation with Nicholas Scoppetta, a counsel for the Knapp Commission. The Knapp Commission has nothing on Leuci. There are not even allegations against him. But there are pleas against the Narcotics Division, and Leuci, introduced to Scoppetta as a detective who may know something, has agreed to this friendly chat.

Very soon, Scoppetta decides that Leuci is a troubled young man.

They talk for three straight days. The subject is crooked cops, and Leuci becomes more and more agitated.

Do you know what it's like to be a narcotics detective? he asks Scoppetta. Do you have any conception? Do you know what it's like working six, seven days a week? Do you know what it's like on a February night in south Brooklyn, a block from the piers, with two addict informants in the back of the car, both of them crying, begging

A50



Star witness en route: In 1972 Leuci had both New York police and federal marshals protecting his trip from Governor's Island.

you for a bag of heroin? Do you know what it's like going home 50 miles away and getting a phone call five minutes after you're home saying, I blew the shot, please come back and give me another bag? And driving back 50 miles, and watching him tie up, and walking out of the room? Then working with him the next morning and locking up some dope pusher that's just as sick as he is? It's an insanity. And going into the office and your boss says you have to make five arrests this month? You have to be one of the best, otherwise you go back to swinging a stick.

Scoppetta, listening, wonders what has provoked this outburst.

You lawyers are in Westbury or on West End Avenue, Leuci tells him. We're in El Barrio, we're on 125th Street. You want us to keep everybody inside the barricades so you can stay outside. I'm on Pleasant Avenue and 116th Street at three o'clock in the morning, just me and my partner and Tony somebody that we have been following for three weeks, and he's going to offer me money, and me and my partner are going to decide whether we'll take it or not. You don't care about me. The only one who cares about me is my partner. It's me and him and this guy we caught. We're going to take him to jail and lock him up. We're going to take his money. F---k him, f---k you, f---k them.

Scoppetta listens, waiting. Is Leuci blurting out some kind of confession? Has Leuci been on the take?

I see what kind of man you are, and I see what kind of man my partner is, Leuci goes on. There's just no comparison, see? I'm going to side with him. He tells me it's okay, Bobby, we can take this money. Hey, Bobby, it's you and me against the rest of the world, and we have to go home and take care of our wife and kids. We can go on vacation this year instead of waiting five years, drive a decent car. You lawyers are eating in the Copa. We try to get \$40 expense money, and the department won't give us that.

We're selling ourselves, our families, Leuci continues. These people we take money from own us. Our family's future rests on the fact that some dope pusher is not going to give us up, or some killer, some total piece of s---t, is not going to give us up.

For three days, Scoppetta plays Leuci expertly. There are no tape recordings, no threats. He is fatherly, soft-spoken, kind. Italians stick together, he reminds Leuci. He talks about close Italian families. He touches Leuci.

Leuci confides. His younger brother, they have just discovered, is a heroin addict. My father, Leuci says, has just called me to my face a corrupt cop.

Scoppetta says gently: And you don't want to be a corrupt cop anymore.

But Leuci wants nothing to do with Scoppetta or the Knapp Commission, he says. The purpose of the Knapp Commission is to dump on cops. Meanwhile, what about the corrupt judges, prosecutors, defense attorneys—lawyers one and all? They are more corrupt by far than cops.

Scoppetta replies that the Knapp Commission is obliged to concentrate on cops. Then f---k the Knapp Commission, answers Leuci.

But at the end of three days, the two men come to an agreement. They will try to get a new office set up under the federal attorney, and Leuci, wearing a recording device, will gather evidence against prosecutors, judges, lawyers. There are one or two terrible cops he means to nail, too, none of them in the Narcotics Division. He himself has admitted to no misdeeds for which he can be prosecuted.

First Scoppetta must go to Washington and beg money for the new office. For this he needs some sort of dramatic evidence.

What would you say, asks Leuci, if I told you that with a single phone call I can buy the location of every wiretap in the city?

Scoppetta refuses to believe him. Leuci makes the call—to a detective in the Criminal Investigation Bureau—and later Leuci meets with him while wearing a recording device. Scoppetta,

“... The two men have Leuci pinioned between them. They are looking for a place to kill him and dump the body...”

both horrified and elated, takes this awful tape to Washington and comes back with funds.

October, 1971. Leuci has worked undercover for nine months. He is one of three men moving—apparently aimlessly—along the sidewalks of lower Manhattan. This is no stroll, and its purpose is not aimless. The other two men have Leuci pinioned between them. They are looking for a place to kill him and dump the body. Leuci wears a miniature transmitter behind his belt buckle and an aerial wire taped to the middle of his chest. His two federal bodyguards have long since lost contact with him.

The focus of this investigation has been—is—lawyer Edmund Rosner, a reputed case-fixer against whom no charges have ever stuck. Rosner has been trying to buy secret grand-jury testimony using Detective Nicholas Lamattina and bail-bond investigator Nicholas DeStefano as intermediaries. They offered Leuci \$2,850 for the grand-jury minutes. After making secret tapes with all three men, Leuci took and vouchered the money. The prosecutors were almost ready to pounce.

However, Lamattina and DeStefano have become suspicious. Tonight's meeting was demanded on the spur of the moment, and, once Leuci appeared, any possible backup team was eluded instantly and with ease—they merely marched Leuci down a one-way street against the flow of traffic. Now they look for an alley, an abandoned building.

Leuci talks fast. Never once in all these months has he lost his cool, nor does he do so now. These are the streets of Little Italy. If he can only spy someone he knows.

And he does. There on the street corner stands Alphonse Indelicato, better known as Sonny Red, a vicious killer. Some years before, a narcotics detective had threatened to arrest Sonny Red unless bought off. Leuci had been brought into the deal by his cousin John Lusterino, a captain in the Colombo family, and had acted as intermediary when the money changed hands. He had been paid a commission.

Now Leuci urges his captors to confer with Sonny Red across the street there. Sonny Red will vouch for him as corrupt, and therefore trustworthy.

Lamattina is armed and holds Leuci tightly, as DeStefano approaches Sonny Red. Across the street, the two men converse. Sonny Red is staring at the ground. Finally, he stares at Leuci.

Later Leuci learns the gist of their conversation.

DeStefano: We think he's a rat. We think we should kill him.

Sonny Red: If he's a rat, then you should kill him. But if you kill him, you better be sure he's a rat, because he's a friend of ours.

DeStefano recrosses the street and confers with Lamattina. They decide to let Leuci go. No hard feelings, says DeStefano.

Lawyer Rosner is convicted for bribery and obstruction of justice after trial, and his appeal is still pending. Lamattina and DeStefano plead guilty and go to prison.

How high did corruption go? Was it really possible to bribe a district attorney? A judge? To find out, the prosecutors, Leuci's employers, invented even more elaborate scenarios.

A highly paid federal informant named Carlo Dandolo is brought in to pose as a major narcotics-dealer. His arrest can be easily arranged. Once in court, he is to begin bribing.

Leuci, acting on instructions, arranges for Sergeant Peter Perrazzo, whom he believes to be a corrupt cop, to arrest Dandolo. Dandolo is at the Americana Hotel. He should be good for plenty.

Instead of arresting Dandolo himself, Perrazzo farms the case out to Detective Joe Nunziata, 39, one of Bob Leuci's closest friends. Nunziata hurries to the Americana, where he arrests Dandolo. On him he finds the planted heroin, the planted money, and the planted passport showing stamps from Beirut, Marseilles, and other such places.

Nunziata at this time works for the Joint Task Force, whose cases are processed not in state court but in federal court. So that's where Nunziata brings Dandolo. The scenario is already in ruins—wrong courthouse, wrong arresting officer—but instead of abandoning it, the prosecutors listen to Dandolo, who says: This guy is a corrupt cop. I sense it. I can make a case against him. Never mind the D.A.'s and judges. Let's get this detective.

Leuci is aghast. He knows Nunziata. He knows his friend is in terrible peril. Nunziata is an honest man and a great detective, he pleads. But the revised scenario goes forward.

Dandolo, out on bail, meets regularly with Nunziata. Nunziata is convinced that Dandolo is the biggest narcotics-dealer ever to fall into his

hands. He thinks he's playing Dandolo. It's the greatest case he has ever worked on. Dandolo keeps offering a bribe. The detective keeps refusing.

Repeatedly Nunziata tries to tail Dandolo away from their meetings. He expects to be led to Dandolo's narcotics contacts. But Dandolo is cute. He shakes the tail each time. Nunziata becomes convinced that Dandolo always makes for some specific address, and in fact this is true. Dandolo's goal is a cover apartment on the East Side where the prosecutors—and an anxious Leuci—wait each time for his report.

But Dandolo has a weakness, and Nunziata sees what it is: women. So Nunziata introduces him to a certain waitress. The detective has told her: Go anywhere with him except the Americana Hotel. All I want to know is where he takes you.

Dandolo takes the waitress straight to the cover apartment and to bed. Within hours, Nunziata is in the basement there, attaching an illegal wiretap to the apartment phone. He thinks he has found Dandolo's narcotics drop; instead, he is tapping a line leased to the very federal authorities who are trying to trap him.

A final attempt to bribe Nunziata is to be made. Leuci protests again that Nunziata is honest; the scenario should be abandoned. Nevertheless, Dandolo, wearing a wire, is sent out.

Leuci goes home, where he paces the floor. He wants to phone Nunziata. Joe, Joe, you're walking into a trap. But he doesn't do it.

Dandolo, as condition of bail, is not allowed to leave the country. Meeting now with Nunziata, he begs the detective to let him fly to Marseilles for a few days of urgent business. When he comes back he will give Nunziata evidence against a major dealer—not an Italian, some black bastard. Dandolo goes into what Leuci ever after would refer to as the “Sons of Italy” routine. Italians must help each other. Finally Nunziata says: Okay, I'll let you go back for a few days.

Dandolo presses \$4,000 on Nunziata. He doesn't want to take it—the tape recording is quite specific on that point. Dandolo persists. As a token of my esteem, Nunziata shrugs and pockets the money.

Nunziata then decides to check out his wiretap. He goes to the basement of the apartment house, walking right past a federal agent doing his laundry. The amazed agent watches the detective disconnect the illegal wiretap and



A safe house: In 1974, federal prosecutors moved Leuci's family to northern Virginia, the location of one of several hideaways used, each complete with bodyguards (foreground). Leuci and his wife huddle in background. Their son found such living "normal."

the tape recorder attached to it. There is a confrontation. The two men hold each other at bay. Superiors flock in from all over. Nunziata is told that he is in serious trouble.

For what? he demands. For an illegal wire on one of the biggest narcotics-dealers in the world?

No, not for an illegal wiretap, Joe, he is told. But for taking \$4,000.

He is allowed to go home. He is allowed several days in which to contemplate arrest, prison. Then he is summoned to a meeting of prosecutors, who call him a whore and a thief. Andy Tartaglino, number-two man in the federal drug agency, informs him that he has three choices: He can start denouncing his colleagues in SIU, he can go to jail, or he can kill himself.

The next day, Nunziata chooses the third of these options.

Leuci is told on the steps of the courthouse. His stomach goes into convulsions. He begins to vomit. When this ends, he enters a room where Scoppetta waits with federal officials. Scoppetta asks the others to leave, then says: How did we get into this, Bob?

They face each other across the rug. Leuci says: I don't know. You did it.

Scoppetta starts to cry. Leuci starts to cry. They stand apart, facing in opposite directions, weeping.

March, 1974. Three years have passed. Leuci is no longer undercover.

He has testified in trials, though never against friends or former partners. People on both sides of the law have gone to jail. Leuci's place of residence has been changed three times, and he is guarded around the clock by teams of federal marshals. Articles have been written about him. He is portrayed as a hero cop. He has admitted to minor acts of corruption himself, but so minor they were dismissed. Leuci's image was about to be changed dramatically.

In one case, an SIU detective, Carl Aguiluz, has been implicated. Aguiluz is brought in, stripped of his gun and shield, and threatened with prison unless he cooperates. Prosecutors attempt to frighten Aguiluz into submission. For three hours they hammer at him. But Aguiluz, though terrified, will not squeal. They can do to him what they like. He will not sell out his friends.

Leuci is asked to talk to him. It's possible, a prosecutor tells Leuci, that this guy could have the same emotional reaction you had; it's possible we can get him to do the things you did.

Aguiluz, Leuci knows, is another of the SIU superstars—he is a brilliant detective. He loves being a detective. He has no other life. He once seized 105 kilos of pure heroin and cocaine straight from France, the biggest New York narcotics case ever, much bigger than the French Connection. Leuci tells Aguiluz what a great detective he is.

Then: Is this the way it ends, Carl? Do you want to go to jail? To West Street tonight? They're going to put you in jail. Tonight.

Why are they persecuting us? demands the anguished Aguiluz.

Leuci says: I spoke with them. They told me they won't indict you. They told me they'll try to get you your pension. Just tell them everything, and they'll help you. They'll relocate you in another part of the world and you can start your life all over again.

Aguiluz, desperate, asks: Can you come to West Street with me? Can you stay with me?

Leuci leaves the room to report. He's going crazy in there, he tells the prosecutors. Let me leave with him now. Give him his gun back, and his shield. Let me take him out of here as a policeman. Don't take him out of here as a prisoner. Give him time to think about doing this as a policeman.

The prosecutors agree. An amazed Aguiluz gets back his gun and shield.

Leuci takes him to a restaurant on Long Island. Leuci's bodyguards sit in another part of the restaurant. The dinner is a long one. By the time it ends, Aguiluz has agreed to cooperate.

The next day he begins to tell all, including much of what Bob Leuci has been holding back for three years. Aguiluz is thrown immediately before the grand jury, where he names names.

"...He has decided to kill himself. No other way out. He can't shoot himself. He must crash his car so his wife can collect insurance..."

The grand jury begins indicting nearly every cop who ever served in SIU.

Meanwhile, the prosecutors swarm around Leuci. You're our principal witness, they tell him. You've testified under oath. You've been cross-examined under oath. You've admitted to only three corrupt acts, and not very serious acts either. Aguiluz says three is a ridiculous number, that up until 1971 you were one of the most active guys up there. We want the truth.

At first, prosecutors attempt to cajole him. Very soon they threaten him. You've committed perjury in trials. Talk or be indicted.

Leuci goes home for the weekend—at this time the prosecutors have his family in a house in northern Virginia.

It is all closing in on him, and a perjury charge seems the least of it. If I go in and tell them, he broods, I've got to tell the whole thing. I can't pick and choose. That means I can't protect my partners. I can't protect Mandato, Wolff, Cody. . . . I'm not going to do it.

Leuci goes for a long walk with his seven-year-old son.

He has decided to kill himself. There seems no other way out.

He takes his son home, kisses him good-bye, and gets into his car. He has decided he can't shoot himself like Nunziata. He must crash his car so his wife can collect the insurance. He drives up and down George Washington Parkway looking for an abutment to crash into. He goes past one abutment, past two more. He is driving at 70 miles an hour, then 80, 90, and a police car comes up and pulls him over.

Leuci says: I'm a New York City cop.

The other cop says: I've been watching you for the last half hour. What are you trying to do, kill yourself?

Leuci says lamely: I just had a fight with my wife.

So the two cops talk. The other cop had been in narcotics, too, but had got out quickly. Narcotics is a crazy scene. He wants no part of it. He has read about New York. Are any of Leuci's friends in trouble?

Yes, Leuci says.

They exchange phone numbers. The other cop invites Leuci to the Redskins' games this fall. He has season tickets. I got them on the arm.

Of course, says Leuci, what else?

The next day he flies to New York. The interrogation of Leuci lasts some days. He has no new information on

the selling of seized heroin. As for the famous theft of the French Connection heroin from the police property clerk's office, Leuci has already pointed the prosecutors toward one detective he believes responsible. An income-tax-evasion case will be made against him. A second case of sold heroin involves Aguiluz and two others who, having seized the 105 kilos of heroin and cocaine, held back five, which they sold for around \$40,000 to a narcotics-dealer. The prosecutors know about this case also. Contrary to what people think, Leuci tells them, heroin seized by SIU detectives did not normally go back onto the street; SIU detectives arrested more pushers, seized more narcotics than any other agency by far. The SIU guys were great detectives. Once in a while, they took.

The other stories Leuci recounts are all similar in tone. There are more than a dozen in all, and the same characters keep reappearing, principally Frank Mandato, Dave Cody, Leslie Wolff—and Robert Leuci.

The prosecutors take special interest in three cases from 1968 to 1970 which can perhaps be prosecuted. Leuci recounts them this way.

(1) Armed with warrants, Leuci, Mandato, Cody, Wolff, and three others raided the bar and apartment of a narcotics-dealer named Santiago Valdez. They arrested him and seized his drugs. While Leuci was searching the bar, Wolff came down and said he had found money in the apartment upstairs. There's a hell of a lot of money up there, Wolff said, and I'm not giving it to this dope-pusher.

Wolff went back upstairs. After precisely 90 seconds, Leuci stepped out onto the sidewalk, and the money came flying out of the upstairs window in a hatbox. Leuci caught the hatbox, walked to his car, and drove off. Later the detectives split some \$12,000.

(2) Leuci and his teammates obtained a warrant for the arrest of Jose Vasserman, another major narcotics-importer. Leuci and his team talked the building superintendent into shutting off Vasserman's water and electricity simultaneously. When Vasserman peered out into the hallway to see if other lights were out too, the detectives grabbed him without a struggle.

Inside the apartment was a second man they didn't know. After talking it over, they accepted \$3,600 to let this man go. They then arrested Vasserman and seized and vouchered his drugs.

About two weeks later, Leuci got a

telephone call from his cousin Lusterino. Mike Coco, another drug-dealer, wanted to see Leuci. Leuci and Mandato met Coco in the Holiday Inn on 57th Street, where Coco said to the detectives: I've got \$20,000 to fix this case for Vasserman.

The two detectives said: There's no way this guy can beat this case.

Coco said: Take this \$10,000. If the guy goes to jail, give it back to me, because I'm going to have to vouch for this money. If the guy beats the case, you get another \$10,000.

Leuci and Mandato took the money and the next day talked it over with Cody and Wolff. Leuci said: Coco is vouching for this money. If Vasserman goes to jail, we're going to have to give it back.

Wolff said, according to Leuci: Let him sue me.

Vasserman was sentenced to seven years. Coco's \$10,000 was not returned. Two, possibly three men came for cousin Lusterino one night in 1972 as he was leaving his mother's house—Leuci's Aunt Rose's house—and after a brief struggle took him away. He was never seen again.

(3) The four detectives were trying to make a case against Manuel Noa, another major narcotics-mover. But Noa never moved drugs unless paid in advance. The detectives needed \$9,000 front money. The Police Department did not have that kind of money. If they went to the feds for it, the feds would take over their case. So they went to an informant—a second major dealer—and borrowed the money from him. At length, Noa informed the informant that the shipment was in. The informant informed the detectives, who drove up to Noa's West 49th Street apartment armed with warrants. Inside they found drug paraphernalia and records of drug transactions, but no drugs, though they tore the apartment apart. They did find a picnic basket full of money, \$40,000 or more.

The five detectives (Leuci's team plus Sergeant John Hourigan) left the apartment with about \$20,000 in a paper bag. They returned the \$9,000 to their informant and shared the rest, which came to about \$2,000 each.

In all, Leuci admitted to pocketing some \$20,000 during those years.

Mandato and then Cody, but not Wolff, are brought in and questioned. Mandato agrees to cooperate. Cody begins to cooperate, too. The decision is

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A semisafe restaurant: While on the job, Leuci (right) is always accompanied by another cop—in this case, Vincent Murano.

made to bring in Wolff. Cody asks to talk to Wolff first.

That night he meets Wolff for dinner, then goes to Donohue's bar on 72nd Street and Broadway. He drinks heavily for several hours, then drives into the park and shoots himself.

All week Leuci has been close to the breaking point himself. The next morning in the courthouse someone says to him: By the way, Cody's dead. Leuci has a tube of tranquilizers. He swallows every pill, eludes his bodyguards, and leaves the courthouse. The pills do not kill him. He is found walking dazedly through the streets of Brooklyn.

The prosecutors choose never to prosecute Leuci. They owe him something.

One prosecutor said: You could wait 50 years and never get another opportunity such as he gave us.

In all, Leuci was responsible for cases against approximately 100 defendants. The last case to come to trial was the prosecution of Leslie Wolff last month.

The case against Wolff appeared to be a strong one. The principal witness against him was Robert Leuci, now 36, still a detective second grade in good standing. He gave his testimony, and then for two days was grilled about his own past. This case—and his whole

life—had come full circle, and sitting before the jury in the thirteenth-floor courtroom, he seemed to be fulfilling two roles at once—he was prosecutor and defendant both.

Wolff watched impassively from the defense table while Leuci was accused—and accused himself—of acts for which Wolff was being tried. Leuci's testimony, after so many years, was entirely professional. But his emotions were a jumble. He didn't want his former partner convicted, and yet if Wolff was acquitted, then would not the jury, in effect, be condemning Leuci in his place?

The defense brought in a number of prosecutors for whom Leslie Wolff had recently worked. All testified that Wolff was an honorable man and a superb detective. They would give Leuci no credence whatsoever.

The trial was halted while a second group of prosecutors was brought in to praise Leuci. Scoppetta, now a deputy mayor, came. Former Assistant U.S. Attorney Mike Shaw came. Whitney North Seymour came. Rudy Giuliani came. They testified about the rare, rare thing Leuci had done in coming forward of his own accord, about his decision of conscience, about his bravery, his integrity, about all those cases. Yes, he had perjured himself in two trials, but only to save his partners—to save Leslie Wolff there. Leuci was a good man,

an honorable man. To Shaw, he was even more. "Bob Leuci is one of my heroes," Shaw said.

Leuci himself seems to have been hoping for a verdict that would justify not only his testimony against Wolff, but his testimony against everyone else, too, a verdict beyond the competence of that jury, or any other.

They acquitted Leslie Wolff.

What will happen to Leuci now? Though never granted a munity, he is unlikely ever to be prosecuted. He had never been promised a continuing career in the Police Department either. Nonetheless, it seems clear he will be allowed to stay. He works out of police headquarters on investigations that do not tap his enormous skills or his special knowledge of the drug world and the Mafia world. He earns \$23,055 a year, is eligible for a pension in 1981.

He lives with his wife and their children—his son is ten and his daughter, seven—in still another distant city from which he commutes to work each day. Leuci was offered a new identity, but refused it. They have a few friends who predate 1971, and new friends are hard to come by. There are those who despise Leuci for having been a corrupt cop and others who despise him for having broken the law of silence. He tends to ask each new acquaintance too soon and too often: What do you think of me?

ASS

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

Docket Number 72CR782

-v-

EDMUND A. ROSNER

INZER B. WYATT

(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that EDMUND A. ROSNER appeals to the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☒ orderS ☐ other (specify) see additional page entered in this action on May 11, 1977 (Date)

Address

J. Jeffrey W. Wainwright
Counsel for Appellant

Date May 12, 1977

To: U.S. ATTORNEY, SDNY

401 Broadway
New York, New York 10013

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

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☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

TRANSCRIPT ORDER

Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE)

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number of pages.

Date

Signature

(Court Reporter)

ORIGINAL

6

James A. Wainwright
Clerk of the Court

A56

UNITED STATES OF AMERICA

-v-

EDMUND A. ROSNER

Denying a motion to disqualify and a motion seeking

a new trial.

WEISENFELD
US v. Rosner

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that
deponent is not a party to the action, is over 18 years of age
and resides at 286 Richmond Avenue, Staten Island, N.Y.
10302. That on the 23 day of June, 1977 at
No. 1 St. Andrews Pl.
NYC

deponent served the within *brief Appendix*
upon U.S. Atty. So. Dist. of NY

the Appellee herein, by delivering true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
23 day of June 1977.

William Bailey
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1978

Edward Bailey
Edward Bailey

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